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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,313	03/23/2007	Roger Braun	06-144	7894
34704 7590 09/24/2009 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
DICUS, TAMRA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/569,313

**Applicant(s)**

BRAUN, ROGER

**Examiner**

TAMRA L. DICUS

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-65 is/are pending in the application.
- 4a) Of the above claim(s) 50-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CI/CD)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 02/21/2008

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-49, in the reply filed on 08/20/09 is acknowledged. Note that claims 02/21/06 cancelled claims 1-19, thus the current claims elected are 20-49, examined below.

### ***Claim Objections***

Claims 20-49 are objected to because of the following informalities: the use of "plastics" is not grammatically correct in all of the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Evaluations of level of ordinary skill in the art requires consideration of factors such as various prior art approaches employed, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively

working in the field, commercial success, failure of others, and the inventor's educational level.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this case reasonably reflect this level of skill.

Claims 20-31, 38-40, 42-44 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6077613 to Gaffigan.

Gaffigan teaches Claim 20, a wooden material panel (of wood material 60, FIG. 4 and associated text)l, including a multilayer surface coating (polymeric matrix 20 – single or blends of such polymers as polyethylene or ethylene vinyl acetate-classed elastomers (what happens after is inherent to the nature of the resin-re claim 49) or alternatively backings 10 or 30, FIG. 4 and associated text, -of polyester, polypropylene) applied at least on parts of the panel, said surface coating comprising at least one layer of plastics, polymeric matrix coating 20 has a Shore hardness A of less than 75, and also a range of 65 to 80, falling within or at Applicant's range of having a Shore hardness A up to 90 (claim 20) and claims 21-23. Shore hardness A of less than 75, falls within the claimed range of claims 23-25. Should the select surface coatings be the polymers of the backing layers, while not stated what the Shore Hardness values are, it is inherent as the material is the same. The

panel is a floor or ceiling panel. Any of the layers are considered bonding agent layers as said materials are adjacent and thus bond with the surrounding layers. See 3:20-30, 4:5-20, 4:20-55, and 5:1-30, 50-65. Claims 20-30, 44, and 47-48 and are met. To claim 31, see 4:40-60. Claims 38-40 and 42 multilayers are identified as set forth above. Claims 40 and 42 are not in the present tense – e.g. “have been applied”. To claim 43, because 20 and 10 are different materials, they would inherently have different Shore values. The reference is anticipatory.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6077613 to Gaffigan.

The reference does not teach the instant invention with sufficient specificity to constitute anticipation. The reference fails to teach the thicknesses as recited. The reference does teach the thicknesses per claims 32-37. However, it would have been obvious to one of ordinary skill in the art to produce a thickness as claimed, since it has been held that discovering an

optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272. 617 F.2d 272,205 USPQ 215(CCPA 1980). See also MPEP § 2144.05 II (B). Thickness affects the strength.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6077613 to Gaffigan in view of 5,569,505 to Nichols.

Gaffigan essentially teaches the claimed invention above.

Gaffigan doesn't teach the plastic coating surrounding the panel as in claim 41. Further RE Claim 41 is not in the present tense – e.g. “have been applied”.

However, Nichols teaches in general moldings (plastic) wrapped with plastic decorative skin layers to make the molding appear seamless used in decorative panels (see 1:5-10, 3:23-35).

It would have been obvious to one having ordinary skill in the art to have modified Gaffigan and wrap the plastic layers around the panel of Gaffigan in order for the entire article to not have seams yielding a more desirable appearance as taught by Nichols above.

Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6077613 to Gaffigan in view of US 20040197468 (Geel et al.) or alternatively in view of US 4,163,813 to Sheets et al.

Gaffigan essentially teaches the claimed invention above.

RE claims 45-46-varnish and paint layers, Gaffigan doesn't teach, however Geel teaches paint (varnish is an obvious alternate for improving appearance) for applying to polyester mat ceiling panels as external decorative markings. See [0004,0017,0025].

Sheets also teaches decorative compositions of varnish or paint to give wood panels protection and color for decoration. See Abstract, 1:15-20, 2:65-66, and 4:15-25.

It would have been obvious to one having ordinary skill in the art to have modified the panel of Gaffigan to include paint or varnish layers for improving the protection or decorative nature of panels as provided by Geel or Sheets. See above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMRA L. DICUS whose telephone number is (571)272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Ruthkosky can be reached on 571-272-1291. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tamra L. Dicus /TLD/  
Examiner  
Art Unit 1794

September 23, 2009

/Bruce H Hess/  
Primary Examiner, Art Unit 1794